

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.805 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 18-11-2005 passed in O.P.No.83 of 2000 by the I Additional Metropolitan Sessions Judge, Hyderabad. (for short, the Trial Court).

2. Brief facts of the case are that the claimant filed the claim petition against the respondents claiming compensation of Rs.1.50 lakhs for the injuries sustained by her in the accident took place on 23-12-1996 due to the rash and negligent driving of the driver of the jeep bearing No.ATL 1892 when she is proceeding on scooter driven by her husband, near Narsapur X roads signal, Balanagar, Hyderabad.

3. In the claim petition, the 1st respondent-Corporation filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Trial Court came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the crime vehicle. So far as granting of compensation is concerned, the Trial Court granted an amount of Rs.55,750/- under various heads,

payable by 2nd respondent only with interest at 9% per annum throughout.

5. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the 2nd respondent-insurer.

7. Learned counsel for the appellant-claimant contends that the Trial Court erred in awarding meager amount towards disability and therefore, he prayed for fair compensation.

8. Learned Standing Counsel for the 2nd respondent, contends that the Trial Court awarded compensation in a just and proper manner and he supported the order passed by the Trial Court.

9. Admittedly, the claimant is having an avocation of tailoring and earning Rs.1800/- per month. Due to the accident, she was sustained grievous leg fracture injury. As per the evidence of P.W.2, fracture of both bones and right leg lower 1/3rd with one inch shortening and there is a restricted movement of the right ankle and he also issued Ex.A-14, disability certificate, indicating 30% partial and permanent disability. Hence, this Court feels that awarding Rs.15,000/- towards permanent disability by the Trial Court is unjust since once the percentage of disability is accepted, the Court cannot be left with fixing consolidated amount, and automatically, the

principle as laid down by the Apex Court in **Syed Saleem v. Abdul Shukur and another**¹ needs to be applied. Then the compensation under this head is enhanced by calculating @ 30% disability.

10. Now coming to the quantum of compensation under 'loss of income for disability' is concerned, admittedly, the claimant is a tailor and earning Rs.1800/- per month. Hence, fixing an amount of Rs.1800/- per month as monthly income of the claimant is reasonable. Further, as already held by this Court regarding disability @ 30%, after deducting the remaining amount, her income comes to Rs.540/- p.m. i.e. Rs.6,480/- per annum. Further, since the claimant is aged about 35 years at the time of accident, the correct multiplier is '16' as per **Smt. Sarla Varma v. Delhi Transport Corporation**². Hence, the total loss of income in respect of the disability comes to Rs.1,03,680/- (Rs.6,480/- x 16).

11. Except the above modification, the compensation awarded by the Trial Court under other heads i.e. Rs.17,735/- towards medical expenses and treatment etc.; Rs.20,000/- towards pain and suffering and Rs.3,000/- towards loss of earnings during the period of treatment shall remain unchanged. Therefore, the claimants are granted total compensation of Rs.1,44,415/- i.e. Rs.1,03,680.- (+) Rs.17,735/- (+) Rs.20,000/- (+) Rs.3,000/- (rounded off to Rs.1,44,500/-).

¹ 2007 (1) ALD 382

² (2009) 6 S.C.C. 121

12. Insofar as the fastening of liability is concerned, as on the date of accident i.e. on 23-12-1996, the ownership is rested with the 2nd respondent as per Exs.B-1 to B-7 since he is successful bidder and purchased the subject crime vehicle in the auction from the 1st respondent-Corporation on 09-10-1996 and the delivery was effected to the 2nd respondent-owner on 11-10-1996. After couple of months, the accident occurred i.e. on 23-12-1996. In view of the factual aspect, the owner of the vehicle and the person in possession of the vehicle is 2nd respondent. In view of the same, the Trial Court fastened the liability against 2nd respondent only.

13. However, as per the definition in Section 2 (30) of the Motor Vehicles Act, 1988, the Corporation continues to be the owner since the vehicle at the time of accident stands in the name of the 1st respondent-Corporation only as the same was not transferred in the name of 2nd respondent as per the records of the Road Transport Authority Department.

14. Hence, considering the technical reasons, the factual possession placed before the Court cannot be ignored and thus, this Court feels that to compensate the claimant, principle of pay and recover is applicable and accordingly, the 1st respondent-Corporation shall pay the compensation amount to the claimant and the same be recovered from the 2nd respondent-owner of the vehicle.

15. In the result, the appeal is allowed by enhancing the compensation awarded by the Trial Court from Rs.55,735/- to Rs.1,44,500/- (Rupees One Lakh Forty Four Thousand and Five Hundred only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the entire amount. No costs.

16. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 12.11.2019
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